



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Cash Prize Drawing by National Oceanic and  
Atmospheric Administration

**File:** B-247391

**Date:** September 27, 1991

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### DIGEST

National Oceanic and Atmospheric Administration's (NOAA) proposal to pay cash prizes to selected individuals providing information about certain fish is intended to further NOAA's acquisition of that information and its statutorily required research. The proposal thus satisfies a requirement for an authorized purpose for the use of appropriated funds under 31 U.S.C. § 1301(a) (1988) and our related cases. However, NOAA's proposal contains certain elements of a lottery which may be prohibited by certain federal statutes, state laws, and regulations. NOAA therefore is advised to consult with the Department of Justice and other appropriate agencies to ensure that its proposal is not a prohibited lottery before spending appropriated funds as proposed.

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### DECISION

The Chief of the Financial Management Division of the National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce), requests an advance decision on whether NOAA may use appropriated funds to make cash payments to the winners of drawings held by the National Marine Fisheries Service (NMFS). NOAA proposes to conduct the drawings and make cash payments to encourage fishermen to return fish tags used by NMFS for research on the history and migration rate of certain fish. We conclude that NOAA may make the proposed expenditures of appropriated funds to the extent discussed below.

### BACKGROUND

Section 304(e) of the Fishery Conservation and Management Act of 1976, Pub. L. No. 94-265, 90 Stat. 331, 352 (1976) (codified at 16 U.S.C. § 1854(e) (1988)), requires Commerce to conduct research to support fishery conservation and management. Commerce's research under section 304(e), actually conducted by NOAA and NMFS, concerns matters bearing upon the abundance and availability of fish, including the interdependence of fisheries or stocks of fish and the impact of pollution on fish populations. In connection with this research, NMFS issues fish tags displaying questions about the circumstances under which the fish was caught, a return

address, and the word "reward." When completed and returned by fishermen, the fish tags provide information on the history and migration rates of the tagged fish.

NMFS currently pays a reward of \$5 for the return of fish tags. To increase the return rate on fish tags and to enhance its research, NOAA proposes to expand NMFS' reward program by offering the choice of the present \$5 reward, a baseball cap with the reward program logo, or a chance in an annual cash prize drawing to those returning fish tags. NOAA proposes to offer \$1,000 for first prize and \$500 each for two second prizes. To support its proposal, NOAA cites B-230062, Dec. 22, 1988, in which we did not object to the Army's purchase of recruiting posters to be awarded by drawing to individuals providing needed information to Army recruiters.

NOAA would pay for the cash prizes from its appropriation for Operations, Research, and Facilities. For fiscal year 1991, this appropriation was available for "necessary expenses of activities authorized by law." Title I of the Departments of Commerce, Justice, and State Appropriations Act for Fiscal Year 1991, Pub. L. No. 101-515, 104 Stat. 2101, 2104-2106 (1990).

#### DISCUSSION

NOAA requests our opinion on its proposal to pay cash prizes to the individuals selected in annual drawings. However, an analysis of NOAA's present program would be relevant to an analysis of its proposal. Therefore, we begin by addressing the legality of the reward program as presently conducted.

Under 31 U.S.C. § 1301(a) (1988), appropriated funds may be used only for authorized purposes. The determination that a particular expense is necessary for an authorized purpose is, in the first instance, a matter of agency discretion. B-223608, Dec. 19, 1988. Accordingly, when we consider whether an expense is necessary, we determine only whether it falls within the agency's legitimate range of discretion, or whether its relationship to an authorized purpose or function is so attenuated as to take it beyond that range. Id. at 4.

We have considered agencies' use of appropriated funds to obtain information on several occasions. For example, in B-172259, April 29, 1971, we held that the Forest Service could use appropriated funds to pay individuals for information regarding violations of laws and regulations protecting national forests. The Secretary of Agriculture was statutorily required to protect national forests from destruction, and the Forest Service's appropriation for fiscal year 1971 provided funds for the necessary expenses of forest protection. We found that paying individuals for information

concerning violations of laws protecting national forests was necessary for the effective administration and enforcement of those laws. Therefore, we raised no objection to the Forest Service's proposed expenditure of appropriated funds. See also B-183922, Aug. 5, 1975 and B-106230, Nov. 30, 1951 (both approving the use of appropriated funds to compensate informers under the necessary expense theory where the information obtained was required for the accomplishment of agency functions).

More recently, in B-230062, Dec. 22, 1988, we considered the Army's proposed purchase of framed posters to distribute as prizes to selected individuals providing information needed for recruiting purposes. The Army was statutorily required to "conduct an intensive recruiting campaign" and received funds for that purpose. The Army argued that the availability of prizes prompted individuals to provide recruiters with information essential to the recruiting effort, i.e., name, address, and telephone number. We found that the Army's purchase of posters to facilitate its acquisition of needed information from potential recruits was directly related to the accomplishment of its statutory mandate and, therefore, a permissible expenditure of appropriated funds.

The circumstances presented here and our prior decisions justify NOAA's use of appropriated funds for cash rewards. Commerce is statutorily required to conduct research supporting fishery management, and it carries out that function through NOAA and NMFS. In order to carry out that function effectively, NMFS must obtain information from members of the public. As in the Forest Service and Army cases, NMFS' rewards facilitate its acquisition of the needed information; the rewards provide an incentive to members of the public to return fish tags that they might otherwise collect, display, or discard.<sup>1/</sup> Therefore, NOAA's present distribution of \$5 rewards is reasonably necessary to its accomplishment of an authorized purpose and a permissible expenditure of appropriated funds available for necessary expenses.<sup>2/</sup>

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<sup>1/</sup> In its submission, NOAA explained that, for a variety of reasons, it is difficult to achieve a high return rate on fish tags issued. Further, NOAA identified several entities that have successfully used reward drawings to increase the return rate on fish tags.

<sup>2/</sup> We note that the right to a reward can be derived only under a binding and enforceable contract including both a valid offer, of which both parties have knowledge, and acceptance of the offer. 41 Comp. Gen. 410 (1961); 26 Comp. (continued...)

Although the necessary expense rule may justify the expenditure of appropriated funds for purposes not specifically provided for, it does not support expenditures that are prohibited by a provision of law or legal principle. Such expenditures do not fall within the agency's legitimate range of discretion. B-240001, Feb. 8, 1991. We have consistently held that agencies may not use appropriated funds to purchase personal gifts. See 57 Comp. Gen. 385 (1978); 54 Comp. Gen. 976 (1975). However, we have based our determinations that particular items are personal gifts on the absence of any connection between the items at issue and the purposes of the appropriations to be charged. See, e.g., B-201488, Feb. 25, 1981. Since the \$5 rewards are reasonably necessary to the accomplishment of NMFS' research, an authorized purpose, our decisions on personal gifts do not bar this expenditure of appropriated funds.

We now turn to NOAA's proposed expansion of its reward program to include the alternative of participating in an annual drawing for a limited number of large cash prizes.<sup>3/</sup> Like the present \$5 rewards, NOAA would distribute the chances and prizes in connection with its statutorily required research. In addition, NOAA intends its proposed prizes to induce fishermen to return fish tags that would facilitate its acquisition of information needed for the research. These facts support NOAA's determination that the proposed prizes are reasonably necessary to its accomplishment of an authorized purpose.

Therefore, the prizes to be awarded by drawing are reasonably necessary to NOAA's accomplishment of an authorized purpose, and satisfy a requirement for the use of appropriated funds under 31 U.S.C. § 1301(a) and our related cases. However, we note that various federal statutes (e.g., 18 U.S.C. §§ 1301-1304), state laws, and regulations prohibit federal employees and the public from conducting and participating in lotteries except under limited circumstances. The three essential elements of a lottery are (1) the distribution of prizes, (2) according to chance, (3) for consideration. Federal Communications Commission v. American Broadcasting Co., Inc.,

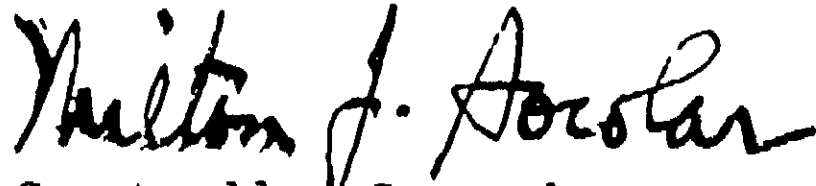
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<sup>2/</sup> (...continued)

Gen. 605 (1947). The fish tag displaying the word "reward" constitutes a valid offer and a fisherman's performance of the specified task, i.e., the return of the completed tag to NMFS, constitutes a valid acceptance of the offer.

<sup>3/</sup> The analysis under which we conclude that the present \$5 rewards are authorized applies to the proposed use of appropriated funds for baseball caps as well.

347 U.S. 284 (1953). NOAA's proposal certainly contains the first two elements, and arguably contains the third as well. Further, regardless of whether NOAA's proposal is lawful, the decision to conduct what some may perceive as a lottery presents policy questions that should be carefully considered. We therefore suggest that NOAA consult with the Department of Justice, the Office of Personnel Management, and appropriate Congressional committees before implementing its proposal.



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